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Lim Kim Hua v Ho Chui Lan & Anor

HIGH COURT (SIBU) — CIVIL SUIT NO 22 OF 1987
STEVE SHIM J
27 JUNE 1995

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Land Law *— Indefeasibility of title and interests — Fraud — Onus of proof — Transferor bequeathed property to grandchildren in will — Transferee knew contents of will — Transferor trusted and depended on transferee in management of property — Transferor old and illiterate — Transferee did not draw transferor's attention to will when transferor was executing transfer in her favour — Whether amounting to fraud —*

C *Whether transfer null and void*

Land Law *— Indefeasibility of title and interests — Undue influence — Transferee daughter of transferor — Transferor old and illiterate — Transferee depended on transferor for physical and financial needs — Whether special relationship existed — Whether transferee in a position to dominate transferor's will — Whether could vitiate*

D *validity of transfer executed in transferee's favour*

The plaintiff was the registered proprietress of a shophouse at Kanowit ('the shophouse'). In 1983, the plaintiff executed a will devising and bequeathing the shophouse to her four grandchildren as follows: ½ share to the second defendant, who was the first defendant's son, and

E the remaining ½ share to be divided equally between her three other grandchildren. On 3 May 1984, she executed a memorandum of transfer ('MT1') transferring ½ share of the shophouse to the second defendant. Thereafter, on 30 December 1985, she executed another memorandum of transfer ('MT2') transferring the remaining ½ share

F to the first defendant and one Ho Chui Hiong at ¼ share each. In this suit, the plaintiff had sought for, inter alia, a declaration that both MT1 and MT2 were null and void and for the cancellation of the entries of the transfers in the land register, on the grounds that: (i) the transfers were obtained by fraud or dishonesty; and (ii) the defendants had exerted undue influence on her to part with the

G shophouse. It was not disputed that the plaintiff who was old, illiterate and had a poor memory was dependent on the first defendant for her food, accommodation and management of the affairs of the shophouse between 1983 and 1986. The plaintiff further contended that the first defendant who was fully aware of the content of the will and the

H subsequent transfer of ½ share of the shophouse to her son, the second defendant, had deliberately concealed the matter from the plaintiff when MT2 was executed, to overreach the beneficiaries' interests. However, the defendants maintained that it was the plaintiff herself who suggested the preparation of the transfers and that the district office's clerk had explained the contents of the transfers to

I the plaintiff before she thumbprinted the relevant documents.

Held, declaring that MT2 was null and void, and ordering that the entry on the register relating to MT2 be cancelled:

(1) It has been established that a high standard of proof is required where fraud is alleged. On the evidence, the plaintiff had not been able to establish on a balance of probabilities that there was fraud or dishonesty on the part of the second defendant which had the effect of vitiating MT1, as there was nothing which suggested that the second defendant knew of the existence of the will at the time when MT1 was executed

(2) However, fraud was established against the first defendant as having regard to the close relationship and the trust reposed in the first defendant by the plaintiff, she had a moral duty to lay all information regarding the contents of the will to the plaintiff before she executed MT2. As there was an active concealment of a material fact and dishonest conduct on the part of the first defendant, MT2 would be null and void.

(3) In this case, there was sufficient evidence to show the existence of a special relationship between the plaintiff and the first defendant, as the plaintiff was very much dependent on the first defendant for both her physical and financial needs. It could be reasonably inferred from the circumstances of the case that the first defendant had exerted undue influence on the plaintiff to execute MT2.

(4) In order to rebut the allegation of undue influence, the first defendant must show by strict proof that the plaintiff had fully understood the full significance and effect of the transfer at the time of execution, and that she had drawn the plaintiff's attention to the provisions of the will to enable the plaintiff to decide freely what she wanted to do with her property. In the instant case, the first defendant had failed to do so.

[Bahasa Malaysia summary

Plaintif merupakan tuan punya berdaftar sebuah rumah kedai di Kanowit ('rumah kedai tersebut'). Pada tahun 1983, plaintif telah menyempurnakan suatu wasiat bagi mendevis dan membekues rumah kedai tersebut kepada empat orang cucunya seperti berikut: ½ bahagian untuk defendan kedua, yang merupakan anak lelaki defendan pertama, dan ½ bahagian yang tinggal untuk dibahagi sama di antara tiga orang cucunya yang lain. Pada 3 Mei 1984, beliau menyempurnakan suatu memorandum pindahmilik ('MT1') untuk memindahmilik ½ bahagian daripada rumah kedai tersebut kepada defendan kedua. Kemudiannya, pada 30 Disember 1985, beliau menyempurnakan satu lagi memorandum pindahmilik ('MT2') untuk memindahmilik kepada defendan pertama dan seorang yang bernama Ho Chui Hiong ¼ bahagian setiap seorang. Dalam guaman ini, plaintif telah memohon untuk, antara lain, suatu deklarasi bahawa

kedua-dua MT1 dan MT2 adalah batal dan tak sah, dan untuk pembatalan catatan di dalam daftar tanah, atas alasan bahawa: (i) pindahmilik itu telah didapatkan melalui fraud atau ketidakjujuran; dan (ii) defendan telah mengenakan pengaruh tak wajar ke atasnya untuk memindahmilik rumah kedai tersebut. Adalah tidak dipertikaikan bahawa plaintif yang tua, buta huruf dan mempunyai daya ingatan yang lemah adalah bergantung kepada defendan pertama untuk makanan, tempat tinggal dan pengurusan hal-ehwal rumah kedai tersebut di antara 1983 dan 1986. Plaintif berhujah dengan selanjutnya bahawa defendan pertama yang sedar akan kandungan wasiat itu dengan sepenuhnya dan pindahmilik ½ bahagian daripada rumah kedai tersebut kepada anak lelakinya, iaitu defendan kedua, telah secara sengaja menyembunyikan perkara itu daripada plaintif apabila MT2 disempurnakan, untuk melampaui kepentingan benefisiari. Walau bagaimanapun, defendan-defandan menyatakan bahawa plaintif sendiri yang mencadangkan penyediaan pindahmilik itu dan bahawa kerani pejabat daerah telah menerangkan kandungan pindahmilik tersebut kepada plaintif sebelum beliau mengecapkan ibu jarinya di dokumen-dokumen yang relevan.

Diputuskan, mengisytiharkan bahawa MT2 adalah batal dan tak sah, dan memerintahkan supaya catatan di dalam daftar tanah berkaitan dengan MT2 dibatalkan:

(1) Adalah mantap bahawa standard pembuktian yang tinggi adalah diperlukan apabila fraud dikatakan telah berlaku. Mengikut keterangan, plaintif belum dapat membukti pada imbangan kebarangkalian bahawa terdapat fraud atau ketidakjujuran pada defendan kedua yang berkesan menjadikan MT1 tidak sah, kerana tidak ada apa-apa yang mencadangkan bahawa defendan kedua mengetahui tentang kewujudan wasiat itu apabila MT1 disempurnakan.

(2) Walau bagaimanapun, fraud telah dibuktikan terhadap defendan pertama kerana selepas mengambil kira perhubungan yang rapat dan kepercayaan yang diletakkan ke atas defendan pertama oleh plaintif, beliau mempunyai kewajipan moral untuk membentangkan kesemua maklumat mengenai kandungan wasiat kepada plaintif sebelum beliau menyempurnakan MT2. Oleh kerana terdapat penyembunyian suatu fakta material secara aktif dan kelakuan yang tidak jujur pada pihak defendan pertama, MT2 adalah batal dan tak sah.

(3) Dalam kes ini, terdapat keterangan yang mencukupi untuk menunjukkan kewujudan suatu perhubungan yang istimewa di antara plaintif dengan defendan pertama kerana plaintif sangat bergantung pada defendan pertama untuk kedua-dua keperluan fizikal dan kewangannya. Boleh diinfer secara munasabah daripada keadaan kes ini bahawa defendan pertama telah mengenakan pengaruh tak wajar ke atas plaintif untuk menyempurnakan MT2.

(4) Untuk mematahkan dakwaan pengaruh tak wajar, defendan pertama harus menunjukkan dengan bukti yang ketat bahawa plaintif memahami maksud dan kesan sepenuhnya pindahmilik pada masa penyempurnaan, dan bahawa beliau telah menarik perhatian plaintif kepada peruntukan wasiat itu untuk membolehkan plaintif membuat keputusannya dengan bebas mengenai apa yang beliau ingin buat dengan hartanya. Dalam kes ini, defendan pertama telah gagal melakukan ini.]

Notes

For cases on fraud in land transfers, see 8 *Mallal's Digest* (4th Ed) paras 1384–1400.

Cases referred to

Assets Co Ltd v Mere Roihi & Ors [1905] AC 176 (folld)
Bainbrigge v Browne (1881) 18 Ch D 188 (folld)
Coomber, Re [1911] 1 Ch 723 (folld)
Goh Hooi Yin v Lim Teong Ghee & Ors [1990] 3 MLJ 23 (folld)
Huguenin v Baseley [1803–13] All ER Rep 1 (folld)
Loi Hieng Chiong v Kon Tek Shin [1983] 1 MLJ 31 (folld)
Mohamed Isa v Haji Ibrahim [1968] 1 MLJ 186 (folld)
Tate v Williamson (1866) LR 55 (folld)
Waimaiha Sawmill Co Ltd v Waione Timber Co Ltd [1926] AC 101 (folld)
Zamet & Ors v Hyman & Anor [1961] 3 All ER 933; [1961] 1 WLR 1442 (folld)

Legislation referred to

Contracts Act 1950 ss 16, 17

Dr Chew Peng Hui (*Battenberg & Talma*) for the plaintiff.
David Tiong (*Tiong Lim Wong & Co*) for the defendants.

Cur Adv Vult

Steve Shim J: The undisputed facts in this case can be briefly stated herein. Prior to 1984, the plaintiff, Lim Kim Hua, was the registered proprietress of that parcel of land together with the buildings thereon and appurtenances thereof situated at No 13, Kanowit Bazaar, containing an area of 2,002sq ft; more or less, and described as Lot No 41980 Kanowit Town District (hereinafter referred to as 'the shophouse'). On 6 October 1980, the plaintiff executed a will devising and bequeathing the shophouse to four of her grandchildren, namely, Lim Kiew Yau (who is the second defendant in this case), Soon Choon Eng, Teo Hock Yiew and Teo Sian Siong in equal undivided shares of ¼ each. However, on 10 March 1983, the plaintiff executed another will revoking the 1980 will and devising and bequeathing the shophouse to the same four grandchildren but in different

A proportions as follows: ½ share to Lim Kiew Yau and ⅙ share each to Soon Choon Eng, Teo Hock Yiew and Teo Sian Siong. Then on 3 May 1984, she executed a memorandum of transfer transferring her ½ share of the shophouse to the second defendant, Lim Kiew Yau, and thereafter, on 30 December 1985, she executed another memorandum of transfer
B transferring her remaining ½ share of the shophouse to Ho Chui Lan (who is the first defendant in this case) and Ho Chui Hiong at ¼ share each. On 24 January 1986, a tenancy agreement relating to the shophouse was effected between the plaintiff as the landlady and one Chia Kang Poh as the tenant.

C In this suit, the plaintiff has sought for, inter alia, the following orders, namely, a declaration that the two memoranda of transfer (which have been produced and marked as exhs P4 and P1, respectively) are null and void and for the cancellation of the entries of the said transfers in the land register and costs. The main grounds relied on by the plaintiff are: (a) fraud or dishonesty; and (b) undue influence on the part of the defendants.

D At the outset, I should state that the term 'fraud' has undergone both statutory as well as judicial definition. Under s 17 of the Contracts Act 1950, fraud is defined as including any of the following acts committed by a party to a contract or with his connivance or by his agent, with intent to deceive another party thereto, or his agent, or to induce him to enter into
E the contract: (a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true; (b) the active concealment of a fact by one having knowledge or belief of the fact; (c) a promise made without any intention of performing it; (d) any other act fitted to deceive; and (e) any such act or omission as the law specially declares to be fraudulent.
F It is perhaps appropriate to note the explanation under the said section which states:

> Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence
G to speak or unless his silence is, in itself, equivalent to speech.

In *Loi Hieng Chiong v Kon Tek Shin* [1983] 1 MLJ 31, the Federal Court said inter alia, at p 35:

> As regards the law, it has been said that the courts have so far not ventured to lay down as a general proposition what amounts to fraud. It can only be
H determined from acts and circumstances of a particular case. It usually takes the form of a statement of what is false or a suppression of what is true. Where the relative position of the parties is such as raises the presumption of an unconscientious use of power arising out of the circumstances and conditions, the transaction cannot stand unless the person claiming benefit of it is able to repel the presumption by contrary
I evidence proving to have been in point of fact, fair, just and reasonable per Lord Selborne LC in *Earl of Aylesford v Morris* (1873) 8 Ch App 484; see also *Fry v Lane* 40 Ch D 312.

Therein, the Federal Court cited with approval the following passages in two English authorities, namely, *Assets Co Ltd v Mere Roihi & Ors* [1905] AC 176 wherein Lord Lindley said at p 210:

> Fraud in these actions (ie actions seeking to affect a registered title) means actual fraud, dishonesty of some sort, not what is called constructive or equitable fraud — an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud.

And in *Waimaiha Sawmill Co Ltd v Waione Timber Co Ltd* [1962] AC 101 wherein Lord Buckmaster had reiterated:

> If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent, and so also fraud may be established by a deliberate and dishonest trick causing an interest not to be registered and thus fraudulently keeping the register clear.

On the question of the burden of proof where fraud has been alleged, it has been established that a high standard of proof is required. Here, I would adopt the position taken by the High Court in *Goh Hooi Yin v Lim Teong Ghee & Ors* [1990] 3 MLJ 23 wherein Edgar Joseph Jr J (as he then was) said, inter alia, at p 34:

> ... the onus of proof of fraud even in civil case in Malaysia is proof beyond reasonable doubt. It is not enough to show that the transfer had the effect of depriving the plaintiff of a known existing right. It must be demonstrated that the transfer was executed with the intention of cheating the plaintiff of such right. Furthermore, it is immaterial to decide whether there were other intentions and equally immaterial to decide which was the dominant intention. The intention to cheat must be one which has a substantial influence on the decision to make the transfer.

And of course, the term 'proof beyond reasonable doubt' was briefly elaborated on in an earlier case of *Mohamed Isa v Haji Ibrahim* [1968] 1 MLJ 186 which held that proof beyond reasonable doubt in civil cases did not mean proof had to reach certainty, although it must carry a high degree of probability. And what this meant was that the evidence adduced was such that the court believed its existence or a prudent man considered its existence probable in the circumstances of the particular case; that if such proof extended only to a possibility but not in the least a probability, then it would fall short of proving beyond reasonable doubt. The appellate court in that case held that the facts and circumstances pointed to the probability that there was fraud.

In the instant case, the plaintiff has alleged fraud on the part of the second defendant, Lim Kiew Yau, in respect of the memorandum of transfer dated 3 May 1984 (exh P4), and she also alleges fraud by the first defendant, Ho Chui Lan in respect of the memorandum transfer dated 30 December 1985 (exh P1). As regards exh P4, it is the plaintiff's case that the second defendant had cheated her into executing the document thereby transferring to him her ½ share of the shophouse. This is reflected in the testimony of Ho Chui Hiong (PW2). The second defendant, in

A denying the allegation, has maintained, in effect, that on 3 May 1984, he and the plaintiff (who is his grandmother) had gone to the district office, Kanowit, where the plaintiff requested Mr Lim Ko Jin (DW4), the land clerk, to prepare the memorandum of transfer relating to the plaintiff's ½ share of the shophouse and that after preparing the said document, Mr Lim then read and explained the contents to her. The purpose of the B transfer was also explained to her. According to the second defendant, the plaintiff understood what was explained to her and she then thumbprinted the document. Here, it is significant to note that although the plaintiff had, in 1980, made a will devising and bequeathing the shophouse to four of her grandchildren in equal shares of ¼ each, she had subsequently in 1983 C revoked this will and devised and bequeathed ½ of her share in the shophouse to the second defendant, Lim Kiew Yau, and the remaining ½ share to be divided equally between her three other grandchildren in ⅙ share each. There is no evidence to indicate or suggest that the second defendant knew of the existence of the 1983 will at the time when the memorandum of transfer (exh P4) was executed. Hence, the question of D whether there was any obligation on his part to disclose the said will to the plaintiff and or the land clerk at the material time of the transfer would not arise. In any event, it would appear that the document exh P4 was something of a restatement of the plaintiff's wish or desire to confer ½ share of the shophouse on the second defendant, although of course in E effect she would have relinquished any proprietory interest therein during her lifetime.

On the evidence as a whole, I do not think that the plaintiff has been able to establish, on a balance of probabilities, that there was fraud or dishonesty on the part of the second defendant which could be said to have F the effect of vitiating the memorandum of transfer (exh P4) executed by the plaintiff on 3 May 1984. This I so hold.

The plaintiff has attacked the validity of the memorandum of transfer (exh P1) on the grounds: (a) that there was fraud or dishonesty on the part of the first defendant; and (b) that there was undue influence exerted by the first defendant upon the plaintiff. Under the said memorandum of G transfer, the plaintiff had given all her remaining ½ share of the shophouse at No 13, Kanowit Bazaar, to the first defendant and Ho Chui Hiong (PW2) in equal ¼ share each.

On the issue of fraud or dishonesty, the plaintiff's case is twofold, one relating to the beneficiaries and the other to the plaintiff herself. The H plaintiff has alleged that at the time of execution of the memorandum of transfer (exh P1), there was fraud or dishonesty by the first defendant against the following persons, namely, Soon Choon Eng, Teo Hock Yiew and Teo Sian Siong, who were the beneficiaries under the 1983 will executed by the plaintiff. It is to be noted that these beneficiaries are the nephews of the first defendant. Here, the plaintiff has contended that I although the first defendant had, at all material times, custody and possession of the 1983 will and therefore, must be taken to have knowledge of the provisions therein, she had consciously kept quiet about the matter and that by so doing, she had deliberately and intentionally overreached

the interests of the beneficiaries in question. Such a proposition would tend to suggest that there was perhaps a duty on the part of the first defendant to inform the said beneficiaries about the existence as well as the provisions of the 1983 will. With respect, I am inclined to disagree. None of the authorities cited by Dr Chew can be said to support this contention. This is hardly surprising given the secretive nature of a will whose contents should, in the normal course of events, only be disclosed to the beneficiaries upon the death of the donor. In the premise, I am not persuaded that, in the circumstances of the case, there was any duty cast upon the first defendant to divulge or disclose the provisions of the 1983 will to any of the beneficiaries concerned.

Be that as it may, the situation as regards the plaintiff has to be examined in a different light. Here, there is evidence that the plaintiff was, at the material period between 1983 and 1986, staying with the first defendant and her family in Kanowit, and that she was very much dependent on the first defendant in managing the affairs of the shophouse at No 13, Kanowit Bazaar. This related, for example, to the renting of the said shophouse. There is also evidence to show that the plaintiff tended to be forgetful and was suffering from some form of senility. This was quite apparent when she gave evidence in court. I found her to be quite incapable of recalling simple matters and she drew a complete blank when questioned about the circumstances in which the memorandum of transfer (exh P1) was made. She was obviously prepared to leave questions on such matters to be answered by her daughter PW2, who she had called to testify on her behalf.

In the circumstances, I think there was a duty, at least a moral duty on the part of the first defendant to lay all the facts and information before the plaintiff so that the latter could, within the limits of her mental capacity, determine what she wanted to do with her property. In this case, the first defendant had, as I have stated, custody and possession of the 1983 will and was fully aware of the provisions therein at the time of the execution of the memorandum of transfer (exh P1). She did not disclose the existence of this will nor its provisions to the plaintiff. Had the first defendant told the plaintiff that under the 1983 will, she had already provided the second defendant (who is the son of the first defendant) ½ share of the shophouse and that subsequently, in 1984, had in fact transferred the said ½ share to him by way of gift, it was quite conceivable that the plaintiff, realizing that the first defendant's family was amply provided for, might not have gone through with the execution of the memorandum of transfer (exh P1). It seems clear that the first defendant, being fully aware of the 1983 will and the subsequent transfer of ½ share of the shophouse to her son, the second defendant, had deliberately withheld such vital information from the plaintiff, information which she was duty bound to disclose having regard to the close relationship between them and the trust and confidence reposed in her by the plaintiff at all material times. I find that there was active concealment of a material fact by the first defendant. This is a clear manifestation of dishonest conduct. In the circumstances, fraud has been established against the first defendant.

A That being the case, the validity of the memorandum of transfer (exh P1) has been impinged. It is null and void. This I so hold.

I now turn to the issue of undue influence. Here, the plaintiff has alleged that there was undue influence brought to bear by the first defendant on the plaintiff at the time the memorandum of transfer (ex P1) was B executed. Now, what is undue influence? In a contractual situation, the term as provided in s 16 of the Contracts Act 1950 stipulates:

> A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

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Undue influence may arise from the special relationship between parties. In this connection, *Anson's Law of Contract* (26th Ed) at p 245 cited a passage from *Tate v Williamson* (1866) LR 55 wherein Lord Chelmsford said, inter alia:

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> Whenever two persons stand in such a relationship that, while it continues, confidence is necessarily reposed by one and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage although the transaction would not E have been impeached if no such confidential relationship had existed.

It has been held that not every fiduciary relationship raises a presumption of undue influence: see *Re Coomber* [1911] 1 Ch 723 at p 728. It must be one of a limited class which the courts regard as suggesting undue influence and the relations which fall into this category are those between parent (or F person in *loco parentis*) and child; see *Bainbrigge v Browne* (1881) 18 Ch D 188.

Having regard to the stated law, what then is the position in the instant case? In my view, although the plaintiff's own evidence provides little assistance, there is, I hold, sufficient evidence to show the existence of a special relationship between the plaintiff and the first defendant. It has G not been disputed that, at the material time, the plaintiff was living with the first defendant who provided her with food and accommodation; that the first defendant was entrusted by the plaintiff to manage the affairs of the shophouse. There can be no question but that the plaintiff was very much dependent on the first defendant in both her physical and financial H needs. This was so because she was getting on in age and had a poor memory. She was also illiterate. It was therefore against such factual circumstances that the memorandum of transfer (exh P1) was executed by the plaintiff in favour of the first defendant and Ho Chui Hiong, PW2. From these factors, undue influence can reasonably be inferred unless the first defendant could show that she had not abused her position and that I the said transfer was not brought about by undue influence. She must show, by strict proof, that the plaintiff, at the time of executing the said transfer, had fully understood, not just the nature of the transfer but its full significance and effect: see *Zamet & Ors v Hyman & Anor* [1961] 3 All ER

933; [1961] 1 WLR 1442. I do not think that the first defendant has done so. She has merely alleged that the plaintiff wanted to effect the said transfer in a hurry and that the contents therein were read and explained to her. In my view, this would not be sufficient to rebut undue influence. As Lord Eldon said in *Huguenin v Baseley* [1803–13] All ER 1 at p 3:

> The question is not whether she knew what she was doing, had done or proposed to do, but how the intention was produced: whether all that care and providence was placed round her, as against those who advised her, which, from their situation and relation with respect to her they were bound to exert on her behalf.

In the instant case, the first defendant has not adduced evidence to show that all care and providence had been so taken by her that the plaintiff was put in possession of all material facts and information so as to enable her to decide fairly, fully and freely what she wanted to do with her property. The plaintiff, placed in the position she was in relation to the first defendant, must be in full and complete appreciation of what she was doing. In my view, the first defendant should, in the circumstances of this case, not only have drawn the plaintiff's attention to the provisions of the 1983 will but also to the consequential effect or effects upon the execution of the memorandum of transfer (exh P1). By keeping silent, she had actively concealed the material facts and thus committed dishonesty against the plaintiff.

On the evidence as a whole, I find that there was undue influence exerted by the first defendant upon the plaintiff as regards the execution of the memorandum of transfer (exh P1) at all material times. In the circumstances, I hold that the said memorandum of transfer is therefore null and void.

In summary therefore, the plaintiff has succeeded in her claims only against the first defendant, Ho Chui Lan, but not against the second defendant, Lim Kiew Yau. That being the position, in so far as her claims against the first defendant are concerned, I shall allow the following reliefs:

(1) that the memorandum of transfer dated 30 December 1985 registered under Kanowit Instrument No L32/1986 be declared null and void;

(2) that the entry on the register relating to the said memorandum of transfer under Kanowit Instrument No L32/1986 be cancelled;

(3) that the issue document of title relating to the said memorandum of transfer under Kanowit Instrument No L32/1986 be delivered up for cancellation; and

(4) that the plaintiff be given half the costs of this action to be taxed unless otherwise agreed.

Order accordingly.

Reported by Isabel Liong